SUBJECT INDEX.

	PAGE
Table of Citations	II
Motion for leave to file Brief	1
Summary of Facts	4
Reference to facts in case of *Amici Curiæ*	6
The Issue	6
Summary of Argument	7
Argument	8
POINT I. The delivery of the check by the United States necessarily subjected it to the law of Jugo-Slavia	8
POINT II. The United States cannot recover unless it shows the negotiation of the instrument in Jugo-Slavia had the consequences claimed for it.	13
POINT III. All matters relating to the transfer of commercial specialties are governed by the law of the place of transfer	16
Conclusion	21

TABLE OF CITATIONS.

	PAGE
American Banana Co. *v.* United Fruit Co., 213 U. S. 347	15
Beau *v.* Morris, 221 U. S. 485	15
Cuba R. R. *v.* Crosby, 222 U. S. 473	7, 14
Disconto-Gesellschaft *v.* U. S. Steel Co., 267 U. S. 22.	8, 18
Embiricos *v.* Anglo-Austrian Bank, 1 L. R. (1905), 1 K. B. 677	8, 17
First National Bank *v.* Exchange Bank, 49 App. Div. (N. Y.) 349	11
Grannis *v.* Stevens, 216 N. Y. 583	9
Heavey *v.* Commercial National Bank, 27 Utah 222	7, 10, 11
Hutchinson *v.* Ross, 262 N. Y. 381	20
Ladd & Tilton Bank *v.* United States, 30 Fed. (2d) 334	14
Slater *v.* Mexican National R. R. Co., 194 U. S. 120.	7, 15
Slattery & Co. *v.* National City Bank, 114 Misc. (N. Y.) 48	11
United States *v.* Bank of New York, 219 Fed. 648..	14
United States *v.* National Exchange Bank, 270 U. S. 527	7, 14
Weissman *v.* Banque de Bruxelles, 254 N. Y. 488..	8, 19, 21
Weisberger Co. *v.* Barberton Savings Bank, 87 Ohio State 21, 34 L. R. A. (N. S.) 1101	7, 11

IN THE

Supreme Court of the United States

OCTOBER TERM—1934.

No. 120.

UNITED STATES OF AMERICA,
Petitioner,

AGAINST

GUARANTY TRUST COMPANY OF NEW YORK.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

Motion for Leave to File a Brief as *Amici Curiæ*.

MAY IT PLEASE THE COURT:

The undersigned move for permission to file the following brief as *Amici Curiæ* herein. The question involved in the present case is whether the transfer of a commercial specialty in a country other than that of the United States is subject to the law of the jurisdiction where the transfer was made.

The undersigned, on behalf of the American Express Company, are interested in the following cases in which said American Express Company has assumed the defense, now pending in the courts hereinafter mentioned, wherein the same question involved in this case is presented for determination:

United States *v.* Guaranty Trust Company of New York, now pending in the United States District Court for the Southern District of New York, bearing file number L 55 (252); and United States *v.* Guaranty Trust Company of New York, now pending in the United States District Court for the Southern District of New York, bearing file number L 55 (79).

Due to the fact that the Solicitor General of the United States has selected this case as a test case, no opportunity may be afforded the American Express Company to present its views in connection with the determination of the issue involved. The amount of refunds involved in the above mentioned cases is substantial, and the undersigned therefore request that this Court permit them to file the following brief as *amici curiæ* in the above entitled matter.

The attorneys for the appellee and the Solicitor General of the United States have consented in writing to the filing of this brief.

Dated, New York, November 2, 1934.

Edwin de T. Bechtel
Malcolm S. McNeal Watts
Amici Curiæ.

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BRIEF OF *AMICI CURIÆ*.

This brief, by permission of the Court and with the consent of counsel for the respective parties, is filed by the undersigned as *Amici Curiæ* and on behalf of the American Express Company of New York, which has assumed the defense of actions against the Guaranty Trust Company of New York involving the negotiation on the Continent of Europe of other checks issued by the Veterans Bureau of the United States, negotiated abroad and upon which the United States is asserting a right to recover the face value on the ground of forgery of the endorsements of the several payees.

Facts.

The material facts to the issues herein are briefly stated as follows:

The Disbursing Clerk of the United States Veterans Bureau drew a check on the Treasurer of the United States, dated October 29, 1921, to the order of Louis Macakanja, 37 Sasava Kot Glina, Z. P. Maja, Jugoslavia, in the sum of $160.00. From the allegations of the complaint, which are not denied, it appears that the plaintiff thereupon forwarded the same by mail to the said Louis Macakanja at 37 Sasava Kot Glina, Z. P. Maja, Jugoslavia. On November 30, 1921 the said check was transferred and delivered for a valuable consideration to the "Merkur" Bank of Jugo-Slavia with the purported but forged endorsement of the payee upon said check. On December 3, 1921 the "Merkur" Bank endorsed the said check and transferred and delivered it to the "Slavenska" Bank, D. D., Zagreb, Jugo-Slavia for a valuable consideration. On or about December 3rd, 1921 the "Slavenska" Bank for value received, duly endorsed the said check to the order of the Guaranty Trust Company of New York, the defendant herein, and forwarded the said check to the defendant by mail. It is stipulated that all the transfers aforesaid were made in the Kingdom of Jugo-Slavia and that the "Merkur" Bank and the "Slavenska" Bank received the check in good faith for valuable consideration without negligence and without actual notice of the forgery of the endorsement of the payee or any other defect. Thereafter the Guaranty Trust Company of New York received the said check in good faith without notice of forgery in the endorsement of the payee or any other defect, and was not guilty of fraud or negligence in receiving the same, and stamped upon the back thereof "Previous Endorsements Guaranteed". The check was presented by the defendant to the Federal Reserve Bank of New York for collection and thereafter paid

to the defendant. On or about April 27, 1926 plaintiff ascertained the payee's signature on said check was forged and demanded reclamation through the Federal Reserve Bank of New York. This action was instituted on the 4th day of December, 1929. It is stipulated that the law of the Kingdom of Jugo-Slavia in reference to checks and bills of exchange, is as follows:

"Upon the negotiation and transfer of a check or bill of exchange each transferee, endorsee, or holder thereof obtains a good title to the instrument and acquires the right to collect and retain the proceeds thereof, even though the endorsement of the payee is forged where

(a) the instrument purports to bear a chain or series of endorsements from the payee of the instrument to the transferee, holder or endorsee thereof; and

(b) the said transferee, holder or endorsee gives valuable consideration for the instrument; and

(c) the said transferee, holder or endorsee takes the instrument without actual notice of any forgery or other defect in the instrument and is not guilty of any fraud or gross negligence in taking the instrument:

The law of Jugo-Slavia further provides that

(a) when an endorsement follows a blank endorsement there is a presumption of law that the person who executed the endorsement has acquired title to the instrument under the blank endorsement; and

(b) the transferee, holder or endorsee of the instrument is under no duty or obligation to investigate the genuineness of prior endorsements.

Under the law of Jugo-Slavia, an endorser does not guarantee or warrant the genuineness of prior endorsements.

The law, as above stated, was in 1921 and still is in full force and effect in Jugo-Slavia."

Brief Reference to Facts in Case Represented by *Amici Curiæ*.

The suits in which the *amici curiæ* are interested involve similar questions of the applicability of the laws of Italy and Greece, which are substantially, if not exactly, identical with the law of Jugo-Slavia, to endorsements of similar checks issued by the Veterans Bureau to payees in Italy and Greece and endorsed in those countries and collected from the Treasurer of the United States in similar manner. In both actions the Government alleges that the endorsements of the respective payees are forged. The facts on this appeal are typical of the facts in the other proceedings. In these suits the Guaranty Trust Company is the nominal defendant being the bank of deposit, or successor to the bank of deposit of the American Express Company, which has assumed the defense of the actions.

In one suit it will affirmatively appear that the checks there in litigation were mailed to the payee in the Kingdom of Italy by their deposit in a branch post office of the Kingdom of Italy in the City of Naples. The mailing was done by the Consular representatives of the United States in the Kingdom of Italy.

The Issue.

The issue herein is whether the Circuit Court of Appeals for the Second Circuit was right in holding in the first instance that the law of Jugo-Slavia was to be applied to the transfers of the check in that country, and, further, that under the law of Jugo-Slavia the Guaranty Trust Company obtained a good title to the instrument and had right to collect and retain the proceeds thereof irrespective of its endorsement upon the item.

Summary of Argument.

The following points are submitted as determining the issues on this appeal:

I. The issue of the check in suit involved two things, the making out of the check and delivery. The delivery was by mailing the check to the payee in Jugo-Slavia. The act of the drawer of the check in delivering it for the purpose of making it a valid instrument in the hands of a person in Jugo-Slavia, entailed the consequences that every result actually flowing from the means adopted for delivery bind the drawer.

Heavey v. *Commercial National Bank,* 27 Utah 222;

Weisberger Co. v. *Barberton Savings Bank,* 87 Ohio St. 21.

II. The petitioner has sued to recover back the amount which it paid upon the check in question, on the ground that a particular endorsement, that of the payee, was a forgery. The stipulated record shows that the forgery, if any, was committed in Jugo-Slavia. The record stipulates that the law of Jugo-Slavia is contrary to the Government's contention.

United States v. *National Exchange Bank,* 270 U. S. 527;

Cuba R. R. Co. v. *Crosby,* 222 U. S. 473;

Slater v. *Mexican National R. R. Co.,* 194 U. S. 120.

III. The weight of authority of the United States and England has applied to the transfer of commercial specialties the rule of international law for the transfer of tangible chattels, that is to say, the method of their transfer and the rights and liabilities arising therefrom

are to be determined by the law of the country in which the instrument physically is at the time the transfer takes place.

Embiricos v. *Anglo-Austrian Bank,* 1 L. R. (1905), 1 K. B. 677;

Disconto-Gesellschaft v. *U. S. Steel Co.,* 267 U. S. 22;

Weissman v. *Banque de Bruxelles,* 254 N. Y. 488.

Argument.

It is submitted that the United States Circuit Court of Appeals for the Second Circuit was correct in holding that the law of Jugo-Slavia applied to the transfer of the item in suit and also that the said Court fully considered and properly enunciated the principles which must govern the case at bar.

However, in view of the fact that the petitioner has raised a contrary contention before this Court, the following points are presented:

POINT I.

Under the Negotiable Instruments Law as it prevails in the District of Columbia, the issue of an instrument thereunder requires two things, each of which may result in a liability of the drawer. The instrument must be made out in accordance within the terms of the statute. It must also be delivered. The Court of Appeals of the State of New York has held that unless there is shown a valid and actual delivery, or a sufficient constructive delivery to the payee, no liability can be predicated under the Negotiable Instruments Law. Specifically the Court held,

> "Act and intention are the essential constituents of a delivery which makes the instrument operative according to its terms. The final question is, did the

obligor do such act in reference to it as evidences their intention to give it, in the possession or control of the obligee, effect and operation according to its terms."

Grannis v. *Stevens,* 216 N. Y. 583.

The record on this appeal establishes that the United States Government, the plaintiff, mailed the check to the payee, Louis Macakanja, at an address in Jugo-Slavia. The clear inferences from the Government's act are that the payee was in that country, and the Veterans Bureau which issued the item, knew that it would go into the payee's possession in that country, and would be endorsed for purposes of collection in the jurisdiction to which it had been sent. The form of payment adopted by the petitioner, *i. e.,* a check, necessitated that the item would be transferred, otherwise the instrument would have been uncollectible unless the payee came back in person to the United States to collect it. Checks are employed by millions for making payments in foreign countries. They cross national lines in the ordinary course of business affairs. Their transfer for collection is part of the purpose of the parties who issue them, that is to say, to put individuals in other jurisdictions in funds. The United States having made its delivery, could not prevent transfer for collection under the Jugo-Slav law.

The responsibility of a drawer of an instrument may arise from two sources. Those obligations which flow from the terms of the instrument are the usual type of responsibility passed upon by courts. From the nature of the law of the United States, instances where a drawer's direct responsibility arises from delivery and not from the terms of the instrument, are necessarily rare. In its contention and argument the petitioner seeks to ignore and escape from the effect of its own act in making delivery in the form which it adopted. There is a definite responsibility on the drawer and issuer of a check or similar instrument which may arise wholly from the act of delivery and be quite independent of its terms. The

liability of the drawer to pay a person, not the intended payee, who receives and negotiates a check, negligently delivered, is an illustration of this proposition.

The significance of delivery of a check is well expressed in the language of Justice McCarthy of the Supreme Court of the State of Utah, in the case of *Heavey* v. *Bank*, 27 Utah 222, decided in 1904. In that case a check was intended to be sent to James Molloy of Corinne but actually sent to James Malloy of Denver; the latter having previously received notice from the drawer of a deposit in his favor, intended for James Molloy of Corinne, wrote and requested the bank to send the check to him at Denver. Justice McCarthy said:

> "Appellant contends that James Malloy, having procured the draft by artifice and fraud, acquired no right or title to the same, and that his indorsement, which appellant insists, was a forgery, could not and did not invest respondent with any legal right to recover on the instrument which Malloy himself did not possess, however innocent and free from blame the respondent may have been in the part he took in the transaction which eventually put him in possession of the draft. The rule contended for by appellant has been held to apply to cases in which the draft or bill has been lost or stolen, and then negotiated upon a forged indorsement, but the facts in this case do not bring it within that rule. The draft in question was issued by appellant on Malloy's order, in his favor, and he is the man to whom it was sent. True, appellant at the time believed him to be the James Molloy of Corinne, in whose favor the deposit was made against which the draft was supposed to have been drawn. The fact, however, remains that James Malloy, of Denver, is the man to whom the draft was sent. The record shows that when he negotiated the instrument he made no attempt to impersonate some other person, and he indorsed it by writing his own name on the back thereof without any intention that his signature should be taken for that of any other person. Under these circumstances, whatever crime Malloy may have

committed by procuring and negotiating the draft in the manner he did, it is evident that his indorsement of it did not constitute forgery."

In another case of almost similar facts, *First National Bank* v. *Exchange Bank,* 49 A. D., N. Y. 349 (1900), Justice McLaughlin, after reviewing the facts which misled the drawer of the check into believing that it was aware of the identity of the person to whom the instrument was being forwarded, said,

> "The plaintiff in good faith and for value purchased the draft from the *person* to whom it was sent and for whom it was intended and it thereby acquired a good title."

The Court dealt with a parallel case of misdelivery, to the situation disclosed in *Heavey* v. *Commercial National Bank,* and rendered a like decision in,

> *Weisberger Co.* v. *Barberton Savings Bank,* 87 Ohio State 21; 34 L. R. A. (N. S.) 1101.

The facts upon which the court decided disclosed that the plaintiff drew a check to one Max Roth, who, the plaintiff knew, did business at 48 Walker Street, New York City. The plaintiff, however, mailed the check to Max Roth at 48 Walker Street, Cleveland, Ohio. The postman did not find any Max Roth at the address, but did deliver the letter to a Max Roth on Henry Stret, Cleveland, Ohio. This second Max Roth collected the check from the drawee bank and it was held the plaintiff could not recover.

The foregoing authorities and others of the same effect were cited in *Slattery & Co.* v. *National City Bank,* 114 Misc. (N. Y.) 48, to a state of facts which indicated that the plaintiffs, brokers, had on their books an account in the name of Harold E. Richards of Bartlesville, Oklahoma, and another account in the name of Harold E. Richards, of Rockdale, Texas. After the latter account

had been closed out for some time, a check to the order of Harold E. Richards, and charged to the account of the Richards of Oklahoma, was mailed to the Richards in Texas. The Court aptly expressed the effect of the act of the plaintiff in misdelivering the check by stating the intent to make the check payable to the man in Oklahoma, was superceded and blotted out by the actual delivery of the instrument to the man in Texas.

The method of delivery of the Veterans Bureau checks, one of which is involved in this appeal, and which have been issued by millions (the serial number of the check in suit being 40,282,540), is an important, and we submit, conclusive element in determining the liability on instruments of that class which have had a history beyond the borders of the United States. In the case in which the *amici curiæ* are interested the fact will appear that the Government made delivery of the checks there in suit by depositing them in a post office maintained by the Government of the Kingdom of Italy in the City of Naples. Insofar as the Government predicates any argument upon the law of the District of Columbia having attached to the check by virtue of delivery under the law of the District of Columbia, it should be understood that this is not the invariable custom of the United States Government. We contend it makes no difference under what law delivery is made in those instances where the act of delivery involves transmitting the item for the use of the payee in a different jurisdiction. So far as the consequences of transfer, endorsement or negotiation by the payee are concerned, they must be determined by the law to which the drawer submitted his written instrument by the form of delivery which he adopts.

POINT II.

The petitioner, the United States, is not resisting in this case an obligation apparently created against it by the negotiation of a check under the laws of Jugo-Slavia, upon the contention that such negotiation was illegal in fact. It is suing to recover the amount paid in 1921 in discharge of a pre-existing obligation. Its position is affirmative. It is seeking to recover moneys paid out. It must show definite grounds for recovery. The grounds constituting the basis of its cause of action are pleaded in the fifth paragraph of the complaint. That paragraph reads:

> "FIFTH: That the letter containing said check was taken or received in Jugoslavia by some person other than the payee thereof, and that thereafter the name Louis Macakanja was written on the back of the said check, by some person other than the payee thereof, and by a person who was not authorized to sign the name of the said payee, and who had no right, title or interest in or to said check, with possession thereof, and no right or authority to receive, endorse or dispose of same."

It will be noted that the phraseology of the complaint omits pleading an element essential under the law of Europe, namely, that no benefit was received by the payee from the item. The proof herein, being the stipulated record supporting the foregoing allegation, reads:

> "The said purported endorsement of the said payee on the said check is a forgery."

Forgery is well known to the common law. It is a conclusion embodying certain facts, namely, the writing of a person's name without authority and uttering the forged instrument with intent to defraud. The term has been adopted in the various Negotiable Instruments statutes for the purpose of attaching certain civil consequences to the facts constituting forgery. The United States has stipulated that this "forgery" or the acts which underlie

it, and which are implied by it, took place in Jugo-Slavia. We submit that it is clear that the United States is in court predicating a recovery against the defendant upon acts which happened in the Kingdom of Jugo-Slavia, to whose law the check was subjected by the form of delivery to the payee adopted by the United States.

It has been held that in suits of this nature the Government is subject to the same rules affecting ordinary individuals, and must meet the requirements of pleading and proof applied to other litigants.

> *United States* v. *National Exchange Bank,* 270 U. S. 527, 534;
>
> *United States* v. *Bank of New York,* 219 Fed. 648, 653 (C. C. A. 2nd);
>
> *Ladd & Tilton Bank* v. *United States,* 30 Fed. (2d) 334, 336 (C. C. A. 9th).

Mr. Justice Holmes of this Court, in *Cuba R. R. Co.* v. *Crosby,* 222 U. S. 473, decided in 1912, said (478):

> "It may be that in dealing with rudimentary contracts or torts made or committed abroad, such as promises to pay money for goods or services, or battery of the person or conversion of goods, courts would assume a liability to exist if nothing to the contrary appeared. *Parrot* v. *Mexican Central Railway Co.,* 207 Mass. 184. Such matters are likely to impose an obligation in all civilized countries. But when an action is brought upon a cause arising outside the jurisdiction it always should be borne in mind that the duty of the court is not to administer its notion of justice but to enforce an obligation that has been created by a different law. *Slater* v. *Mexican National R. R. Co.,* 194 U. S. 120, 126. * * * 479 (1.3) We repeat that the only justification for allowing a party to recover when the cause of action arose in another civilized jurisdiction is a well founded belief that it was a cause of action in that place. The right to recover stands upon that as its necessary foundation. It is part of the plaintiff's case, and if there is a reason for doubt, he must allege and prove

it. The extension of the hospitality of our courts to foreign suitors must not be made a cover for injustice to the defendants of whom they happen to be able to lay hold.

In the case at bar the court was dealing with the law of Cuba, a country inheriting the law of Spain and, we may presume, continuing it with such modifications as later years may have brought. There is no general presumption that that law is the same as the common law. We properly may say that we all know the fact to be otherwise. *Goodyear Tire & Rubber Co.* v. *Rubber Tire Wheel Co.*, 169 Fed. Rep. 869."

American Banana Co. v. *United Fruit Co.*, 213 U. S. 347, 356.

Beau v. *Morris*, 221 U. S. 485.

The same Justice in *Slater* v. *Mexican National R. R. Co.*, 194 U. S. 120, stated:

"But as the only source of this obligation is the law of the place of the act, it follows that the law determines not merely the existence of the obligation, *Smith* v. *Condry*, 1 How. 28, but equally determines its extent. It seems to us unjust to allow a plaintiff to come here absolutely depending on the foreign law for the foundation of his case, and yet to deny the defendant the benefit of whatever limitations on his liability that law would impose."

There is a meritorious reason in fact for insisting upon this contention. The difference in the conditions of business and population between the Continental European countries and those of the United States has given rise to widely different methods of dealing with checks. The business world has recognized and the laws of the countries reflect the difference in attitude of the individuals of the various populations in handling financial paper. It is a serious question whether the Negotiable Instruments Law could ever have passed in the United States, had such a high percentage of illiteracy existed, as exists in Europe. The characteristic of American law is the insistence upon

the validity of the handwriting. A similar attitude of the law of the land in Europe would have robbed checks of much of their usefulness.

Checks of the United States Government sent to American soldiers, or their families, in Europe, should be treated in no different manner than local items in ordinary business relations. The law laid down by this Court, above quoted, is just and logical.

It is common knowledge among business men dealing with financial paper having international use, that large numbers of checks are not endorsed in European countries every time title or possession is transferred. Instruments, payable to order, are treated practically as bearer instruments in small communities where the payee is trusted. An item to his order may change hands a dozen times with benefit to each transferor before the last recipient endorses it to a bank for collection. But under the rules of all law, when such endorsement is put on, it must be in the name of the payee. Under such conditions the law of Jugo-Slavia is appropriate for the needs of its subjects. We submit that it would be manifest unfairness to hold that the collecting endorser, taking a good title to an item under the law of Central Europe, should be held to be an Insurer. It is significant that the record contains no stipulation that the petitioner has been forced to pay the amount of this check twice. As the matter stands upon the agreed facts, recovery by the United States may be based upon a technical interpretation of the Negotiable Instruments Law.

POINT III.

There seems to be an unquestioned weight of authority in the United States and England against the contention of the petitioner. The rule that commercial specialties including checks are governed as to their transfer by the law of the jurisdiction where the paper is at the moment of transfer, appears to have recognition by authority and

is applied without substantial exceptions. The rule is sound and gives effect to the view taken by Judge Chase in the Court below. The inference to be drawn from the decisions which have passed upon the precise question, is that so far as the transfer of commercial specialties is concerned, especially those whose history involves the laws of several jurisdictions, title, meaning the right to collect and retain the proceeds, is the primary consideration of the courts when they are called upon to enforce the rule of international law.

We especially direct the attention of the Court to *Embiricos* v. *Anglo-Austrian Bank,* 1 L. R. (1905), 1 K. B. 677. The facts in that case are a close parallel to those on this appeal. A Roumanian bank drew a check in Roumania on a London bank payable to the order of the plaintiffs, and they specially endorsed the check to a London firm and placed it in an envelope for mailing. The check was stolen from the envelope by a clerk of the plaintiffs. It was presented to a bank in Vienna bearing the endorsement of the London firm, which was in fact a forgery. The special endorsement of the plaintiffs, the original payees, and that of the London firm to which they in turn had endorsed the item, showed on the instrument the complete chain of endorsements necessary to pass good title to the Vienna bank which was ignorant of the forgery. The Viennese bank was found not guilty of any negligence in cashing the check. Good title passed to it, and when the Vienna bank sent the check with its endorsement to the defendants in London, it was cashed by them at the bank upon which it was drawn. Judge Walton in the lower Court, gave judgment for the defendants in an action for conversion. On appeal, Judge Vaughan Williams of the Court of Appeals, in affirming the Court below, said, at pages 683-684:

> "I think that the view taken by Walton, *J.*, of the effect of the decision in *Alcock* v. *Smith,* (1892 1 Ch. 238), that the rule that the validity of the transfer of chattels must be governed by the law of the country

in which the transfer takes place, applies to a bill or a cheque, and applies to the transfer of bills or cheques in cases where the transfer is by indorsement, is right; although in the case of *Alcock* v. *Smith* the transfer was not by indorsement, but by process of law in the shape of a judicial arrestment. This conclusion seems sufficient to negative the cause of action in the present case, which is an action by the payee against an indorsee, who claims under a forged indorsement giving him a good title in the country where the indorsement was made.

But it would manifestly be an unsatisfactory state of the law if the legal result is that the indorsement is effective to give the indorsee of a bill a good title as against the payee, but not effective according to English Law to give that indorsee a good title against the drawer or the acceptor. And it would be convenient, as well from a legal as from a commercial point of view, that it should be established that the title by such an indorsement is good as against the original parties to a negotiable instrument, having regard to the contractual liability incurred by them thereby."

In direct analogy to the foregoing decision is the opinion by Mr. Justice Holmes of this Court, in *Disconto-Gesellschaft* v. *U. S. Steel Co.,* 267 U. S. 22 (1925). The facts disclosed by that decision involve the transfer of shares of stock of a New Jersey corporation under the law of England.

The facts in the case were that a number of certificates of United States Steel Corporation, made out to London brokers and endorsed in blank were physically in London at the outbreak of the World War and by virtue of the Public Trustee acts passed by Parliament the Public Trustee seized and held the certificates as the property of a hostile alien. The opinion at pages 28-29 states:

"Therefore New Jersey having authorized this corporation like others to issue certificates that so far represent the stock that ordinarily at least no one

can get the benefits of ownership except through and by means of the paper, it recognizes as owner anyone to whom the person declared by the paper to be owner has transferred it by the indorsement provided for, wherever it takes place. It allows an indorsement in blank, and by its law as well as by the law of England an indorsement in blank authorizes anyone who is the lawful owner of the paper to write in a name, and thereby entitle the person so named to demand registration as owner in his turn upon the corporation's books. But the question who is the owner of the paper depends upon the law of the place where the paper is. It does not depend upon the holder's having given value or taking without notice of outstanding claims but upon the things done being sufficient by the law of the place to transfer the title. An execution locally valid is as effectual as an ordinary purchase. *Yazoo & Mississippi Valley R. R. Co.* v. *Clarksdale,* 257 U. S. 10. The things done in England transferred the title to the Public Trustee by English law."

A case which is seemingly the exact converse of the situation disclosed upon this appeal, was decided by the Court of Appeals of the State of New York in 1930. *Weissman, et al.,* v. *Banque de Bruxelles,* 254 N. Y. 488. Mr. Justice Pound who rendered the decision in that case stated the facts to be that a check was drawn on the Treasurer of the United States for refund of income tax unlawfully collected, to the order of the Bensaude Corporation, and was mailed by the Treasurer in Washington, D. C. to the corporation in the State of New York. The President of the corporation endorsed the check in the corporation's name and mailed it to the Banque de Bruxelles, Lisbon, for collection and credit to his personal account. Under the law of New York a corporation check so endorsed and credited to a personal account, creates a liability which can be enforced against the collecting bank. Under the above facts the law of New York operated to prevent the Banque de Bruxelles from obtain-

ing title to the check or the right to collect it. The handwriting of the endorser or the right of the President to endorse appear not to have been considered. The decision turned clearly upon the provision of the law of the State of New York prohibiting the diversion of corporate funds to a private account.

On page 494, Judge Pound definitely applied the rule of international law that the transfer of commercial specialties was governed by the rules for the transfer of movable chattels, that is to say, by the law of the place where the transfer was actually made. His exact language is,

> "The question then arises whether a check, being an evidence of debt merely, has a different *situs* than tangible personal property. *People ex rel. Hoyt* v. *Commissioners of Taxes,* 23 N. Y. 224. On this point the weight of authority is to the effect that, if the chose in action has assumed the form of a commercial specialty, such as a bill of exchange or promissory note, its transfer is governed by the law of the place of the document at the time of the transfer. Bills and notes were developed under the law merchant as convenient instrumentalities of trade and commerce. They pass from hand to hand by indorsement and delivery, and properly are governed by the rule relating to the transfer of tangibles. *The rule of international law, that the validity of a transfer of movable chattels must be governed by the law of the country in which the transfer takes place, applies to the transfer of checks or bills of exchange by indorsement.* Goodrich on Conflict of Laws, p. 363 *et seq.,* and cases cited; *Embiricos* v. *Anglo-Austrian Bank,* (1905) 1 K. B. 677." (Italics ours.)

Another pertinent analogy is supplied by the case of *Hutchinson* v. *Ross,* 262 N. Y. 381, where the same rule of transfer was applied in determining the validity of the transfer of funds and securities in the State of New York for the purpose of creating a trust, admittedly good under the law of the State of New York but asserted to be illegal under the marriage laws of the Province of

Quebec. Justice Lehman of the Court of Appeals of the State of New York approved the *Weissman* case above quoted and applied the law of transfer with all its consequent rights in the parties thereto of the State of New York, in which the transfer took place.

Stress is laid by the petitioner upon the formal words of the endorsement stamped upon the back of the item by the defendant. The statement is "Previous Endorsements Guaranteed". We submit that the previous endorsements, being acts done within the jurisdiction of Jugo-Slavia while the instrument was physically within the limits of that jurisdiction to which it was sent by the petitioner, are sufficient in law and that the defendant acted without liability to repay the amount of the check by reason of its guarantee of them.

Conclusion.

It is therefore respectfully submitted upon the foregoing decisions that the defendant, Guaranty Trust Company of New York, received a good title to the check issued by the Veterans Bureau, and has a right to retain the proceeds which it collected from the Treasurer of the United States.

Respectfully submitted,

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MALCOLM S. MCNEAL WATTS
Amici Curiæ.

3425—F